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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,811	01/26/2001	Gordon James Smith	ROC920000266US1	8259

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IBM Corporation
Intellectual Property Law, Dept. 917
3605 Highway 52 North
Rochester, MN 55901-7829

EXAMINER

DIXON, THOMAS A

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,811

Applicant(s)

SMITH, GORDON JAMES

Examiner

Thomas A. Dixon

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The new title is acceptable.
2. Applicant's arguments have been considered but are not convincing. Further, the amendment is objected to as introducing new matter. The applicant failed to provide the sections of the specification that support the amendment's language regarding "without adjusting a price of the restricted tickets" The examiner was unable to find support for the amendment, page 10, line 4 specifically refers to a reduction of the price of tickets. Therefore, the new limitation will be given no weight.
3. Applicant has not addressed the 112 1st rejection.
4. Examiner will not comment on the validity of claim 76 of Walker ('620).
5. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 1, including database, server, network connection are disclosed in Walker et al (5,897,620) as described herein.

Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art. However, if the apparatus were to comprise instructions for performing the steps recited, they would be given weight.

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6. Applicant's failure to properly traverse the Official Notice of claim 34 is seen as an admission that "contacting the event sponsor to request an increase in the number of events" is old and well known.

Claim Rejections - 35 USC § 112 1st Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 20, 21, 33, 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The method of claims 20 and 33 and the formula of 21 and 35 are not disclosed in the body of the specification.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 12-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Specifically, the phrase "a program, which when executed" indicates that the program is code per-se in that it has not been executed and is therefore, not statutory.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al (5,897,620).

As per Claim 1.

Walker et al ('620) discloses:

- a network, figure 1;
- a database, see figure 2 (225);
- client computers, (110);
- an event server, see (200).

As per Claims 2-6, 9-11.

The limitations are seen to be non-functional descriptive material as they add no structure.

11. Claims 1-7, 9-19, 22-26, 28-32, 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Fare Play.

As per Claim 1.

Fare Play discloses, see pg 1, lines 30-37:

- a database containing the ticket information for at least restricted tickets different from unrestricted tickets, wherein both the restricted tickets and the unrestricted tickets provide access to an event and wherein the ticket information comprises at least availability information and price information; and
- an event server configured to:
 - access the database;
 - dynamically determine a number of the restricted tickets and to make available for purchase in response to purchase orders received from the plurality of client computers; and
 - respond to the purchase received from the plurality of client computers.

As per Claim 2, 15.

Fare Play further discloses the unrestricted tickets, see pg 4, lines 11-12.

As per Claim 3.

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Fare Play further discloses the sending at least part of the ticket information to the plurality of computers, see pg 3, lines 48-52.

As per Claim 4.

Fare Play further discloses the server is configured to dynamically determine the number of restricted tickets to make available for purchase by, after receiving at least one purchase order, comparing an estimated number of remaining restricted tickets to a predetermined range of restricted tickets and changing the number of restricted tickets to make available for purchase if the estimated number of the remaining tickets is outside the predetermined range, see pg 1, lines 30-37.

As per Claim 5.

Fare Play further discloses the server is configured to dynamically determine the number of the restricted tickets to make available for purchase by periodically changing the number in response to the number of purchase orders received, see pg 1, lines 30-37.

As per Claim 6.

Fare Play further discloses the number of remaining restricted tickets is the difference between a remaining portion of an initial number of the restricted tickets and an estimated number of the restricted tickets to be sold in a remaining time period before an event date, see pg 1, lines 30-37.

As per Claim 7.

Fare Play further discloses the internet, see pg 3, lines 48-52.

As per Claim 9, 17, 25.

Fare Play further discloses the refundable and non-refundable tickets, see pg 4, lines 11-12.

As per Claim 10, 16, 23.

Fare Play further discloses the server is configured to dynamically determine the number of restricted tickets to make available for purchase by periodically changing the number in response to the number of purchase orders and a time period remaining before an event occurs, wherein the event is made accessible to holders of the restricted and unrestricted tickets, see pg 1, lines 30-37.

As per Claim 11.

Fare Play further discloses the event is made conditionally accessible to conditionally to restricted ticket holders and unconditionally to un-restricted ticket holders, see pg 4, lines 11-12.

As per Claim 12, 22.

Fare Play discloses:

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processing purchase orders for the restricted class of tickets received from a plurality of client computers, see pg 3, lines 48-52;

assessing, after processing at least one purchase order, whether a number of the restricted class of tickets available for purchase meets a predetermined condition, see pg 1, lines 30-37;

if the predetermined condition is not met, changing the number of the restricted class of tickets available for purchase to an adjusted number, see pg 1, lines 30-37.

As per Claim 13.

Fare Play further discloses the prior to processing the purchase orders, determining an initial number of the restricted class of tickets to make available for purchase, see pg 4, lines 36-39.

As per Claim 14.

Fare Play further discloses the adjusted number is greater than the assessed number of the restricted tickets available if the assessed number is less than the threshold value, see pg 1, lines 30-37.

As per Claim 18.

Fare Play further discloses the predetermined condition is a threshold and wherein the adjusted number is less than the assessed number of the restricted class of tickets available for purchase if the assessed number is less than the threshold value, see pg 1, lines 30-37.

As per Claim 19, 24.

Fare Play further discloses the predetermined condition varies with time, see pg 1, lines 30-37.

As per Claim 26.

Fare Play further discloses limitations on refund, see pg 4, lines 11-12.

As per Claim 28.

Fare Play further discloses a network, see pg 3, lines 48-52.

As per Claim 29.

Fare Play further discloses changing the number of remaining tickets available comprises decreasing the number, see pg 1, lines 35-36.

As per Claim 30

Fare Play further discloses changing the number of remaining tickets available comprises decreasing and increasing the number, see pg 1, lines 35-36.

As per Claim 31.

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Fare Play further discloses decreasing the number of tickets to stimulate sales, see pg 1, lines 30-36 and pg 4, lines 36-38.

As per Claim 32.

Fare Play further discloses not changing the number of tickets available, see pg 2, lines 3-5.

As per Claim 36.

Fare Play further discloses periodically determining whether the number of remaining tickets is within a predetermined range, see pg 1, lines 30-37 and pg 4, lines 36-39.

As per Claim 37.

Fare Play further discloses periodically determining the initial number is done only once and the assessing and changing are done periodically, see pg 1, lines 30-37 and pg 4, lines 36-39.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al ('620) in view of Web Ventures Announces version 4 of 'BookIt! PRO' – Gives Full Travel Agent Access to Airline Computer Reservations Systems over the Internet.

As per Claim 7.

Walker et al ('620) does not disclose use of the Internet.

BookIt Pro teaches travel planning using a network such as the Internet for the benefit of ease of access to the planning system.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the systems of Walker et al ('620) using the Internet as taught by BookIt Pro for the benefit of ease of access to the planning system.

As per Claim 8.

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Walker et al ('620) discloses contacting a travel agent who would, necessarily have a stand-alone computer configured specifically for ticket purchases, but does not specifically disclose a stand-alone computer configured specifically for ticket purchases.

BookIt Pro teaches travel agents using a separate dedicated CRS terminal as old and well known state of the art.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use a dedicated to ticket purchases as a normal course of doing business.

13. Claims 8, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Fair Play in view of Web Ventures Announces version 4 of 'BookIt! PRO' – Gives Full Travel Agent Access to Airline Computer Reservations Systems over the Internet.

As per Claim 8, 27.

Fare Play discloses contacting a travel agent who would, necessarily have a stand-alone computer configured specifically for ticket purchases, but does not specifically disclose a stand-alone computer configured specifically for ticket purchases.

BookIt Pro teaches travel agents using a separate dedicated CRS terminal as old and well known state of the art.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use a dedicated to ticket purchases as a normal course of doing business.

14. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fair Play in view of Official Notice.

As per Claim 34.

Fare Play does not disclose contacting the event sponsor to request an increase in the number of events.

Official notice is taken that it is well known for concerts to add additional shows to meet fan's demand for tickets for the benefit of increasing fan good will and maximizing profits of a concert tour (within the time constraints of the tour) and further well known in the airline industry to add flights (within in the takeoff/landing slots at an airport) for the benefit of maximizing profits..

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to request the event sponsor to increase the number of events for the benefit of maximizing profits of a concert tour or an airline.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Thomas A. Dixon", with a stylized flourish at the end.

Thomas A. Dixon
Primary Examiner
Art Unit 3629

March 05